

**CHANCERY DIVISION**

**BETWEEN:**

**JOHN ALFRED DONOVAN**

**Plaintiff**

**- and -**

**SHELL UK LIMITED**

**Defendant**

**(by Original Action)**

**AND BETWEEN:**

**SHELL UK LIMITED**

**Plaintiff by Counterclaim**

**- and -**

**(1) JOHN ALFRED DONOVAN  
(2) DON MARKETING UK LIMITED  
(3) ALFRED ERNEST DONOVAN**

**Defendants to Counterclaim**

**(by Counterclaim)**

---

**DEFENCE AND COUNTERCLAIM**

---

**In this pleading the Defendant (being also the Plaintiff by Counterclaim) is referred to as "Shell UK"**

**DEFENCE**

- 1. Paragraph 1 of the Statement of Claim is admitted.**
- 2. In relation to paragraph 2 of the Statement of Claim:**

- 2.1 It is denied that Don Marketing U.K. Limited and/or Don Marketing Management Limited originated the "Make Money" game in 1981 as alleged at paragraph 2(a) of the Statement of Claim or at all. The "Make Money" game was originally launched by Shell UK in 1966 prior to any contact with the Plaintiff or his associated companies. The Plaintiff acting on behalf of Don Marketing U.K. Limited and/or Don Marketing Management Limited assisted Shell UK to develop the pre-existing concept in return for a fee.
- 2.2 It is admitted that Don Marketing U.K. Limited and/or Don Marketing Management Limited introduced the concept of the "Mastermind" game to Shell UK and assisted Shell UK to develop the same in return for a fee.
- 2.3 It is admitted that Don Marketing U.K. Limited and/or Don Marketing Management Limited introduced the concept of the "Make Merry" game to Shell UK and assisted Shell UK to develop the same in return for a fee.
- 2.4 It is admitted that Don Marketing U.K. Limited and/or Don Marketing Management Limited introduced the concept of the "Bruce's Lucky Deal" game to Shell UK and assisted Shell UK to develop the same in return for a fee.
- 2.5 It is denied that Don Marketing U.K. Limited and/or Don Marketing Management Limited originated the "Star Trek : The Game" game in 1991 as alleged at paragraph 2(e) of the Statement of Claim or at all. The Plaintiff acting on behalf of Don Marketing U.K. Limited and/or Don Marketing Management Limited assisted Shell UK to develop the pre-existing concept in return for a fee.
- 2.6 It is denied that Don Marketing UK Limited and/or Don Marketing Management Limited originated the concept of the "Nintendo" game in 1992 in return for a fee or at all.

2.7 It is denied that Don Marketing UK Limited and/or Don Marketing Management Limited originated the concept of the "Hollywood Collection" game in 1992 in return for a fee or at all.

2.8 Save that it is not admitted that Don Marketing Management Limited originated the promotional game "Let's Go Racing", the last two sentences of paragraph 2 of the Statement of Claim are admitted.

Save as aforesaid paragraph 2 of the Statement of Claim is not admitted.

3. In relation to paragraph 3 of the Statement of Claim:

3.1 It is admitted that Paul King (then an employee of Shell UK), Roger Sotherton and the Plaintiff met at Shell-Mex house on or about 23 October 1989.

3.2 It is admitted that a copy of the document headed "A Presentation of Promotional Ideas to Shell UK Oil" dated 23<sup>rd</sup> October 1989 and a letter dated 24<sup>th</sup> July 1990 from Roger Sotherton addressed to Brian Horley were provided to Shell UK.

Save as aforesaid paragraph 3 of the Statement of Claim is not admitted.

4. In relation to paragraphs 4, 5 and 6 of the Statement of Claim:

4.1 It is admitted that if (which is not admitted) either of the two documents referred to in paragraph 4 of the Statement of Claim contained any information which was confidential to Don Marketing UK Limited, Don Marketing UK Limited will have had the right to prevent unauthorised dissemination and use thereof so long as the same remained confidential to that company.

4.2 It is admitted that Shell UK was given notification of the assignment referred to in paragraph 4 of the Statement of Claim on or about 6<sup>th</sup> April 1998.

28 JUN 1990 10:28 AM REPLY TO 750 RE: SWELL 750  
4.3 It is denied that the said assignment was effective to vest any rights in the Plaintiff. It is averred that the said assignment is and has at all material times been void and of no effect for the reasons pleaded in paragraph 16 below.

4.4 Paragraph 5 of the Statement of Claim refers to features which were not disclosed to Shell UK in the document headed "A Presentation of Promotional Ideas to Shell UK Oil" dated 23<sup>rd</sup> October 1989 or in the letter dated 24<sup>th</sup> July 1990 from Roger Sotherton addressed to Brian Horley or at all.

#### PARTICULARS

The following do not appear in the document headed "A Presentation of Promotional Ideas to Shell UK Oil" dated 23<sup>rd</sup> October 1989 or the letter dated 24<sup>th</sup> July 1990 from Roger Sotherton addressed to Brian Horley:

- 
- ~~(i) Feature 1: "multi-collection as partnership"~~
  - (ii) Feature 2: two-tier consortium structure of "members" and "partners"
  - (iii) Feature 6: "multi-currency facility"
  - (iv) Feature 8: "universal brand name but with provision for partner branding"
  - (v) Feature 14: "the founding company would issue and redeem the common currency"
  - (vi) Feature 15: exploitation of the concept "on a multi-national basis"

4.5 It is admitted that the Opinions of Mr. Christian and Professor Worthington have been supplied to Shell UK.

4.6 It is admitted that the documents referred to in paragraph 6 of the Statement of Claim bore the words set out therein.

Save as aforesaid paragraphs 4, 5 and 6 of the Statement of Claim are not admitted.

5. Paragraph 7 of the Statement of Claim is not admitted.

**6. In relation to paragraph 8 of the Statement of Claim:**

**6.1 It is admitted that Don Marketing UK Limited wrote to J. Sainsburys plc on 31<sup>st</sup> May 1990 suggesting that the Plaintiff acting on behalf of Don Marketing UK Limited could provide a written presentation of promotional ideas and that Mr. Horley of Sainsburys responded "given the information in your letter it is clearly very difficult to make an appropriate comment but if you would like to send me the written presentation you refer to, I will of course give it my consideration".**

**6.2 It is admitted that Don Marketing UK Limited thereafter wrote to Mr. Horley on 10<sup>th</sup> July and 24<sup>th</sup> July 1990 concerning various matters including the 'Disneytime' and 'Mcgamatch' promotions.**

**6.3 It is denied that any of the communications referred to in a) and b) above took place pursuant to the disclosure referred to at paragraph 8 of the Statement of Claim.**

**6.4 It is denied that Shell UK requested an option on the multibrand loyalty scheme concept or that Shell UK and Don Marketing UK Limited entered into any such option agreement.**

**6.5 Neither Sainsburys nor Shell UK were interested in pursuing any of the promotional ideas mentioned in the communications referred to in a) and b) above.**

**Save as aforesaid paragraph 8 of the Statement of Claim is not admitted.**

**7. In relation to paragraphs 9, 10 and 11 of the Statement of Claim:**

**7.1 It is admitted that a meeting took place at Shell UK's premises on 12<sup>th</sup> May 1992 between Andrew Lazenby (acting on behalf of Shell UK) and the**

Plaintiff and Roger Sotherton (both acting on behalf of Don Marketing UK Limited).

- 7.2 It is admitted that a promotional game called 'Megamatch' was discussed at that meeting and that there were discussions as to who might be interested in becoming a participant in that scheme.
- 7.3 It is admitted that the Megamatch proposal referred to in paragraphs 9 and 10 of the Statement of Claim was set out in a document entitled "Proposal for National Promotional Activity" and that the document bore the words set out in paragraph 10 of the Statement of Claim.
- 7.4 It is admitted that the Megamatch proposal referred to in paragraphs 9 and 10 of the Statement of Claim was disclosed by Don Marketing UK Limited to Shell UK in confidence.
- 7.5 It is denied that any promotional concept other than the Megamatch proposal was discussed at the said meeting.

Save as aforesaid paragraphs 9, 10 and 11 the Statement of Claim of are not admitted.

8. Paragraph 12 of the Statement of Claim is admitted.
9. In relation to paragraphs 13 and 14 of the Statement of Claim:
  - 9.1 It is admitted that a meeting took place at Shell UK's premises on or about 24<sup>th</sup> November 1992 between Andrew Lazenby (acting on behalf of Shell UK) and the Plaintiff (acting on behalf of Don Marketing UK Limited).
  - 9.2 A promotional game called "Hollywood Collection" and a promotional game called "Make Merry" were presented to Shell UK in documentary form and discussed at the said meeting.

- 9.3 It is denied that any promotional concepts other than "Hollywood Collection" and "Make Merry" were discussed at the said meeting.
- 9.4 It is denied that the letter of 24<sup>th</sup> July 1990 referred to in paragraph 13 of the Statement of Claim was handed to the said Andrew Lazenby at the said meeting and it is further denied that any details of any of the matters referred to in that letter were communicated to the said Andrew Lazenby as alleged in that paragraph of the Statement of Claim or at all.

Save as aforesaid paragraphs 13 and 14 of the Statement of Claim are not admitted.

10. Paragraph 15 of the Statement of Claim is denied.
11. In relation to paragraphs 16, 17 and 18 of the Statement of Claim:
- 11.1 In or around January 1993, Shell UK began to seek participants for what subsequently became its SMART scheme and its SMART scheme was launched in the United Kingdom in October 1994.
- 11.2 It is admitted that Shell UK's SMART scheme is a multibrand loyalty programme involving the use of a smart card and that the scheme is operated through a SMART card consortium being a consortium of retailers and other providers of goods and/or services with Shell UK acting as the leading participant in the consortium.
- 11.3 It is admitted that Shell UK's SMART scheme has features which correspond with those described generally in sub-paragraphs 5, 6, 8, 9, 10, 12, 14, 15 and 17 of paragraph 5 of the Statement of Claim.
- 11.4 Shell UK's SMART scheme draws upon common elements in the field of promotional schemes and was originated, developed and implemented independently of any information disclosed to it by or on behalf of Don

Marketing UK Limited or Don Marketing Management Limited or the Plaintiff.

**PARTICULARS**

- (i) In the 1970s the forerunner of all loyalty schemes was launched: Green Shield stamps. These were offered by many retailers and could be exchanged for catalogue gifts in conjunction with the retailer Argos. The Green Shield stamp scheme had features which corresponded with those described generally in sub-paragraphs 1, 5, 10 and 17 of paragraph 5 of the Statement of Claim.
- (ii) In 1987 Shell UK started to look towards long-term loyalty schemes, as opposed to short term promotions. With this in mind, Shell UK instituted "Project Nova" in 1987 which studied the potential of using smart Card technology in loyalty schemes. The smart cards were to be used to accumulate database information about customers which could be used for marketing and promotions and could be used as "a log book for electronic vouchers gained via fuel purchases". It was envisaged that the electronic vouchers could be exchanged for promotional goods. The intention at this time was to extend the scheme to other third parties for some categories of customer, e.g. enabling car park fees and hotel bills to be charged to a top-of-the-range card. The Project Nova scheme had features which corresponded with those described generally in sub-paragraphs 5, 10, 14, 15, 17 of paragraph 5 of the Statement of Claim. This project was not implemented due to the high cost of using smart card technology at that time.
- (iii) Once it had been decided not to proceed with Project Nova, Tim Hannagan, the sales development co-ordinator within the Retail Marketing division of Shell UK, turned his attention to other ideas for generating long-term customer loyalty. Together with Paul King he developed the Collect and Select scheme which was launched by Shell UK on 1st November 1988. One of the key features of this scheme which differentiated it from other schemes of its type was that customer data could be gathered through the use of bar-coded stamps.

A series of promotions were organised with third party retailers (including Currys, B&Q, Woolworths and Little Chef) which enabled Collect and Select points to be redeemed for discounts. The Collect and Select scheme had features which corresponded with those described generally in sub-paragraphs 1, 5, 6, 8, 9, 10, 12, 14, 15 and 17 of paragraph 5 of the Statement of Claim.

- (iv) In November 1988 Air Miles, using a multi-retailer consortium to issue points, was also launched. Immediately upon its launch Shell UK became one of the retailers issuing Air Miles as part of the Collect and Select scheme. The Air Miles scheme had features which corresponded with those described generally in sub-paragraphs 1, 5, 8, 9, 10, 12, 14, 15 and 17 of paragraph 5 of the Statement of Claim.
- (v) In October 1989 Shell UK's Collect and Select programme was already underway and it was not looking for a new long-term scheme. During 1989-91 Argos and Mobil developed, tested and launched their Premier Points scheme. Also in 1991 Total, Elf, Woolworths and Homebase all started to experiment with reward schemes based on the accumulation of points encoded on to magnetic stripe cards. These schemes had features which corresponded with those described generally in sub-paragraphs 1, 5, 8, 9, 10, 12, 14 and 17 of paragraph 5 of the Statement of Claim.
- (vi) Around October 1991 Tim Hannagan was asked by Shell UK to institute a new project ('Project Onyx') to investigate the possibilities for a new approach to promotional strategy. This project was confidential and kept entirely separate from the activities of the team working on current promotional activity. In November 1991 the schemes developed by Mobil/Argos, Elf, Homebase, Woolworths and BHS were considered and discussed in connection with Senior King Ltd. (a sales promotional agency) in connection with Project Onyx. On 8th January 1992 the agency presented a review of these schemes and others and advised Shell UK to move to smart card technology, which the agency was able to offer in conjunction with Hughes Microelectronics Ltd. (a major international electronics company).

- (vii) On 1st February 1992 Andrew Lazenby became Shell UK's sales promotions manager. By that time Shell UK had decided that its next major promotional step would be the launch of a long-term scheme using the most modern card-based technology and having the potential to involve third parties.
- (viii) In March 1992 Shell UK also received advice from Geoff Howe Associates Limited which had in the autumn of 1991 set up a subsidiary company specifically to develop a particular concept described as "an integrated customer recruitment and customer retention service to be offered to retailers, other service providers and manufacturers". The idea of this scheme was that points would be issued electronically by a number of retailers. It would be possible for each retailer to have its own branded cards but any of the cards would be capable of collecting points from any participating retailer. Each retailer would have its own branded catalogue but once again collectors would be able to redeem any branded cards against items from any of the catalogues.
- (ix) In August 1992 Tim Hannagan produced two notes relating to Project Onyx. The first summarised the basic requirements of the Project Onyx system under various heads: the promotional requirement, the marketing requirement, the equipment requirement and data capture. Among the promotional requirements were the ability to run several different promotional activities at the same time "e.g. national fuel, truckers, Air Miles, third parties, car wash and shop promotions". Among the marketing objectives were "a high degree of flexibility in third party link-up", which included "points issued by third parties, points redemption by third parties, catalogue promotions, partnerships promotion and Shell - our promotion". Under the headings "The equipment requirement" and "Data capture" were included various technical objectives that needed to be fulfilled.
- (x) The second note contained a list of the "players" in Project Onyx, namely, those to whom Mr Hannagan and his colleagues had spoken and who it was felt might have significant input if the project were to proceed further. These included Senior King Ltd. and Geoff Howe Associates Ltd., together with

26 JUN 1998 10:27  
other agencies to whom Shell UK had spoken and a number of companies that were involved in plastic card or smart card manufacture.

- (xi) In September / October 1992 six companies, including the agencies previously referred to, provided presentations and costings for the Project Onyx scheme to Shell UK. In the event Shell UK decided not to proceed with any of the schemes that had been submitted to it but rather to appoint its own agency to devise a 'tailor-made' scheme that would meet its own promotional requirements while making use of the latest technological developments.
- (xii) The project to devise a tailor-made scheme was called 'Project Hercules'. Headed by Andrew Lazenby, it had as its aim the implementation of a card-based scheme, using the information and research that had been acquired during Project Onyx. The potential for fraudulent misuse of magnetic stripe cards and a desire to stay ahead of the competition led Shell UK to revert to smart card technology.
- (xiii) In January 1993 a sales promotional agency called Option One was commissioned by Shell UK to work with it on Project Hercules. Option One had already worked with Shell UK on a number of promotions in the previous year. When Option One was brought in it was briefed on the technological aspects of what Shell UK had already discovered but it did not rely upon the work of any other agency: no material produced by any other agency was ever disclosed to Option One by Shell UK.
- (xiv) Shell UK employed Fortronic, a subsidiary of De La Rue, to advise on the technological aspects of smart card technology. Fortronic had experience of working on smart card projects in Norway since the early 1980's.
- (xv) On 25th May 1994 a trial of Shell UK's SMART scheme started in Aberdeen and the scheme was then launched throughout Scotland on 11th July 1994 and throughout the U.K. in October 1994. The first third party to become a

participant in the SMART consortium was John Menzies, which joined in July 1995. The other SMART consortium participants joined in March 1997.

(xvi) Shell UK was at all material times well acquainted with the sales promotional schemes referred to in paragraphs i) to v) above. The successes and failures of those schemes influenced the development of Shell UK's SMART scheme. Apart from Andrew Lazenby, the only employees of Shell UK who were aware of the multi-brand loyalty proposal put forward by Don Marketing UK Limited were Stuart Carson and Paul King, who left Shell UK's employment in October 1990 and April 1993 respectively. Neither of them took any part in the development of what became the SMART scheme. The only information provided to Andrew Lazenby with regard to the multi-brand loyalty scheme put forward by Don Marketing UK Limited was contained in the copy the document entitled "A Presentation of Promotional Ideas to Shell UK Oil" dated 23 October 1989 which was supplied to him in May 1992 as admitted in paragraph 8 above. To the best of his knowledge and belief he received no further or other information in relation to the said multi-brand loyalty scheme. He did not use or enable or assist anyone else to use any of the information contained in the said document for any purposes connected with the development or implementation of Shell UK's SMART scheme.

Save as aforesaid no admissions are made as to paragraphs 16, 17 and 18 of the Statement of Claim.

12. Paragraph 19 of the Statement of Claim is admitted.

13. In relation to paragraph 20 of the Statement of Claim:

13.1 It is admitted that Shell Thailand and Shell France have developed SMART loyalty programmes in their respective countries and that both were aware of Shell UK's SMART Scheme.

13.2 It is admitted that the French SMART scheme was modelled upon Shell UK's SMART scheme with assistance from Shell UK.

13.3 It is admitted that loyalty schemes modelled in whole or in part upon Shell UK's SMART scheme have been introduced with assistance from Shell UK in Hungary, the Czech Republic, Portugal and Malaysia.

13.4 The Thai SMART scheme was developed without assistance from Shell UK and was modelled upon a combination of the Dutch and Canadian Air Miles scheme and the Australian Fly Buys scheme.

Save as aforesaid paragraph 20 of the Statement of Claim is not admitted.

14. Paragraph 21 of the Statement of Claim is denied.

15. In relation to paragraphs 22, 23 and 24 of the Statement of Claim:

15.1 It is admitted that the assignment referred to in paragraph 22 of the Statement of Claim was made between Don Marketing UK Limited and the Plaintiff on or about 4<sup>th</sup> April 1998.

15.2 It is admitted that Shell UK was given notification of the said assignment on or about 6<sup>th</sup> April 1998.

15.3 It is denied that the said assignment was effective to vest any rights in the Plaintiff. It is averred that the said assignment is and has at all material times been void and of no effect.

#### PARTICULARS

- (i) As at the date of the purported assignment, Don Marketing UK Limited owned no significant assets other than the Rights purportedly assigned and had no distributable reserves. Its liabilities exceeded its assets not least because of its

exposure to the claims of Shell UK with regard to the facts and matters referred to in paragraphs 28 and 31 of the Counterclaim herein.

- (ii) The Rights and 50% of the proceeds of any prosecution of the Rights ('the Assigned Property') were purportedly assigned by Don Marketing UK Limited for a consideration of £1.
- (iii) If (as the Plaintiff maintains but Shell UK denies) the Assigned Property had a value substantially in excess of the consideration stated in the said assignment, the purported transfer of the Assigned Property from Don Marketing UK Limited to the Plaintiff will have amounted to the transfer of a valuable asset of Don Marketing UK Limited to one of its shareholders at a gross undervalue, benefiting that shareholder at the company's expense.
- (iv) In the premises the purported assignment will have constituted a return of the capital of Don Marketing UK Limited to one of its shareholders in a manner not sanctioned by the Court or permitted by Statute. As such it is and was *ultra vires* and incapable of shareholder approval or ratification.

Save as aforesaid paragraphs 22, 23 and 24 of the Statement of Claim are not admitted.

16. The Plaintiff is estopped and debarred by the following agreements that is to say

- (i) The full and final settlement agreement compromising Actions CH 1994 D No. 2259 and CH 1994 D No. 5417 without admission of liability in the terms of an undated document headed 'Letter of Agreement' to which the Plaintiff herein, Don Marketing U.K. Limited, Albert Donovan and Shell UK were parties and
- (ii) The full and final settlement agreement compromising Action CH 1994 D No. 1927 without admission of liability in the terms of a letter dated 8<sup>th</sup> April 1994 from Mackrell Turner Garrett to Royds Treadwell to which Shell UK

and Don Marketing U.K. Limited (the predecessor in title to the Plaintiff herein) were parties

from inviting this Honourable Court:

16.1 to regard any of the matters in controversy between Don Marketing UK Limited and Shell UK in either of the said actions as matters of established fact; or

16.2 to determine any of the matters in controversy between Don Marketing UK Limited and Shell UK in either of the said actions.

In the premises the Plaintiff is estopped and debarred from relying upon any of the matters upon which he purports to rely for the purposes of his plea as to similar fact evidence in paragraph 25 of the Statement of Claim.

17. Paragraphs 26, 27 and 28 of the Statement of Claim are denied.
18. Paragraph 29 of the Statement of Claim is denied. Shell UK has not threatened and does not intend to make use of the "Mega Match" proposal referred to in paragraph 8 above. Further and in any event the allegation in paragraph 29 of the Statement of Claim relating to "*wrongful use of other proposals disclosed by Don Marketing ... under equitable and/or contractual obligations of confidence*" is vague and embarrassing and abusive of the process of the Court.
19. It is denied that the Plaintiff is entitled to the relief claimed or any relief against Shell UK.
20. Save as hereinbefore expressly admitted or not admitted each and every allegation made in the Statement of Claim is denied as if the same were herein set out and traversed seriatim.

## COUNTERCLAIM

21. Shell UK, the Plaintiff and the Second and Third Defendants to Counterclaim were all parties to a deed ('the Funding Deed') dated 6 July 1995. In that deed the Plaintiff and the Second and Third Defendants to Counterclaim jointly and severally covenanted *inter alia* that:

21.1 they would indemnify Shell UK against all claims which might be brought by any of them against Shell UK in the future in respect of events occurring before 6<sup>th</sup> July 1995; and

21.2 they would not solicit or encourage any third party to take action write or otherwise campaign against Shell UK or any of its associated companies or any director or employee of any such company with the object or effect of any such campaign being to denigrate Shell UK or any of its associated companies.

22. It was a further term of the Funding Deed that all money paid thereunder would be repaid in the event that the Plaintiff, the Second and Third Defendants to Counterclaim or any of them brought a claim against Shell UK in respect of events which occurred before 6<sup>th</sup> July 1995.

23. Pursuant to the Funding Deed, Shell UK paid to Don Marketing UK Limited:

23.1 £50,000 on or about 6<sup>th</sup> July 1995;

23.2 £30,000 on or about 21<sup>st</sup> October 1996.

24. Shell UK's SMART scheme was launched in October 1994 and was known to the Plaintiff, the Second Defendant to Counterclaim and the Third Defendant to Counterclaim to have been launched prior to the date (6<sup>th</sup> July 1995) upon which they made and entered into the Funding Deed.

25. In breach of the Funding Deed the Plaintiff has brought the claims made in the Statement of Claim herein the substance of which relate to events which occurred before 6<sup>th</sup> July 1995.
26. In the premises Shell UK is entitled to be indemnified by the Plaintiff, the Second and Third Defendants to Counterclaim and each of them in respect of the claims made in the Statement of Claim herein.
27. Further or alternatively in breach of the Funding Deed the Plaintiff and/or the Second Defendant to Counterclaim and/or the Third Defendant to Counterclaim have taken action, written and/or otherwise campaigned against Shell UK, its directors and/or employees with the object or effect of denigrating Shell UK, and have solicited and/or encouraged third parties to do so.

#### PARTICULARS

Pending discovery and/or the administration of interrogatories herein, Shell UK will rely upon the following facts and matters:

- (i) Leaflets distributed 8th May 1998 by the Plaintiff and the Third Defendant to Counterclaim to all present at the Annual General Meeting of The Shell Transport & Trading Company plc entitled "an open letter to Mr Mark Moody Stuart, Chairman of Shell Transport & Trading Company Plc".
- (ii) The contents of the internet web sites at <http://www.don-marketing.com> and <http://www.shellshareholders.org> which have to date included *inter alia* the following statements:

"Can the Directors of Shell UK be trusted to uphold the code-of-ethics published by the Royal Dutch/Shell Group? Based on our experience the answer is no. Shell's Statement of General Business Principles appears to be nothing more than a PR inspired, confidence trick. Mere sleight-of-hand. A sham."

“Mr Lazenby, who at that time was Shell UK’s National Promotions Manager, acted in flagrant breach of the core principles of honesty, integrity, and openness, proclaimed in Shell’s Statement of General Business Principles.”

“the SMART litigation ... involves flagrantly disreputable conduct by a Shell UK Manager, Mr Andrew Lazenby”

“It is all in line with the evasive and oppressive tactics that we have come to routinely expect from Shell UK Limited. The unprincipled way in which Shell UK has dealt with these matters, makes an absolute mockery of the moral high ground image projected by Shell’s Statement of General Business Principles.”

- (iii) Press briefing documents and advertisements distributed to the media by or on behalf of the Defendants to Counterclaim. Without prejudice to the generality of the foregoing Shell UK will rely upon documents headed **“THE DON MARKETING SAGA”**, **“PRESS RELEASE HIGH COURT WRIT ISSUED AGAINST SHELL UK IN RESPECT OF THE SMART CONSORTIUM SCHEME”** and **“UNLOVABLE SHELL – THE GODDESS OF OIL”**.
- (iv) Letters to the Prime Minister, the Advertising Standards Authority and to individual Shell dealers.
28. By reason of the aforesaid breaches of the Funding Deed and each of them Shell UK is entitled to the repayment from the Plaintiff and the Second and Third Defendants to Counterclaim of £80,000 being the sum paid to Don Marketing UK Limited under the Funding Deed, such liability being joint and several.
29. The following were express terms of the agreement compromising Actions CH 1994 D No. 2259 and CH 1994 D No. 5417 referred to in paragraph 16 i) above: (i) that the parties thereto and each of them would not disclose or comment on the terms of settlement; and (ii) that if any of the parties to the Settlement Agreement breached any of the terms thereof, the sum of £20,000 would be repaid to Shell UK by the Second Defendant to Counterclaim and the Plaintiff and the Third Defendant to

Counterclaim would be jointly and severally liable to pay Shell UK so much of the said sum as the Second Defendant to Counterclaim might be unable to pay.

30. Further or in the further alternative in breach of the said agreement of compromise the Plaintiff and/or the Second Defendant to Counterclaim and/or the Third Defendant to Counterclaim have commented on the terms of the Settlement Agreement.

### PARTICULARS

Pending discovery and/or the administration of interrogatories herein, Shell UK will rely upon the following facts and matters:

The contents of the internet web site <http://www.don-marketing.com> which has to date contained the following statements:

**"Shell UK has also settled two other High Court Actions in our favour."**

**"Shell has settled in our favour the first three High Court Actions that my company brought against it." (letter to the Prime Minister Tony Blair dated 5<sup>th</sup> May 1998)**

**"In fact, Shell has already settled the first three actions in our favour."**

**"Mr Lazenby, who is still a Manager at Shell UK (having returned from his desert exile), is a serial poacher of our ideas. He is the same Shell manager who was involved in the three previous concepts which have been litigated - all of which Shell has already settled in our favour. The evidence published on our website proves that he had no scruples about acting in breach of confidence and/or in breach of contract."**

**"High Court papers unveil 'secret' Shell writ losses... High Court papers have revealed that Shell has already lost three copyright battles with the promotional agency that has issued a High Court writ against it two weeks ago..."**

31. Accordingly Shell UK is entitled to the repayment of £20,000 out of the monies paid to the Second Defendant to Counterclaim in settlement of the aforementioned actions. The Second Defendant to Counterclaim is accordingly liable to repay to Shell UK the sum of £20,000 and the Plaintiff and the Third Defendant to Counterclaim are jointly and severally liable to Shell UK to pay so much of the said sum as the Second Defendant to Counterclaim may be unable to pay.

32. Further Shell UK claims interest pursuant to section 35A of the Supreme Court Act 1981 on the amounts found to be due to Shell UK at such a rate and for such period as the Court thinks fit.

**AND SHELL UK CLAIMS BY COUNTERCLAIM:**

- (1) A declaration to the effect that Shell UK is entitled to be indemnified jointly and severally by the Plaintiff and the Second and Third Defendants to Counterclaim in respect of the claims made by the Plaintiff in the Statement of Claim herein
- (2) An order for payment to Shell UK of all sums which may be found due to it under the said indemnity with interest pursuant to section 35A of the Supreme Court Act 1981
- (3) An order for payment to Shell UK of the sums and each of them referred to in paragraphs 28 and 31 of the Counterclaim with interest pursuant to section 35A of the Supreme Court Act 1981
- (4) Costs
- (5) Further or other relief

**GEOFFREY HOBBS Q.C.**

**PHILIP ROBERTS**

- To: (1) Don Marketing UK Limited whose address is St. Andrews Castle, 33, St. Andrews Street South, Bury St. Edmunds, IP33 3PH
- (2) Alfred Ernest Donovan whose address is Maplebank, 4 Parkside, Bradfield Combust, Bury St. Edmunds, Suffolk, IP30 0LR

Take notice that, within 14 days after service of this Defence and Counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgement whether you intend to contest the proceedings. If you fail to do so, or if your acknowledgement does not state your intention to contest the proceedings, judgment may be given against you without further notice.

Served the 26th day of June 1998 by D.J. Freeman of 43 Fetter Lane, London EC4A 1JU, Solicitors for the Defendant and Plaintiff to Counterclaim.

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

CH 1998 D No. 2149

**JOHN ALFRED DONOVAN**

**Plaintiff**

- and -

**SHELL UK LIMITED**

**Defendant**

(by Original Action)

**SHELL UK LIMITED**

**Plaintiff by Counterclaim**

- and -

- (1) JOHN ALFRED DONOVAN
- (2) DON MARKETING UK LIMITED
- (3) ALFRED ERNEST DONOVAN

**Defendants to Counterclaim**

(by Counterclaim)

---

**DEFENCE AND COUNTERCLAIM**

---

D J Freeman  
 43 Fetter Lane  
 London  
 EC4A 1JU  
 Tel: 0171 583 4055